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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,563	09/29/2003	Walter Rudolf Harfmann		5884

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Harfmann Technology Inc.  
424 Amanda Drive  
Weddington, NC 28104

EXAMINER
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ZEMEL, IRINA SOPHIA

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/672,563

Applicant(s)

HARFMANN, WALTER RUDOLF

Examiner

Irina S. Zemel

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

The disclosure is objected to because of the following informalities: The use of the trademark CESA-EXTEND has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Appropriate correction is required.

The disclosure is objected to under 37 CFR 1.71, as being so incomprehensible as to preclude a reasonable search of the prior art by the examiner. For example, the following items are not understood: the characteristics of the product designated as functionalized polymer Clariant CESA-EXTEND are not described anywhere in the specification. Description of Clariant CESA-EXTEND is not readily available for the examiner, thus claim 9 claiming specific CESA-EXTEND 1568 component can not be examined at this time. Thus, claim 9 is withdrawn from further consideration on the merits.

Applicant is required to submit an amendment which clarifies the disclosure so that the examiner may make a proper comparison of the invention with the prior art.

Applicant should be careful not to introduce any new matter into the disclosure (i.e., matter which is not supported by the disclosure as originally filed).

***Claim Rejections - 35 USC § 112***

Claims 2-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

Claims 3,5 and 7 recite amounts of additives, however it is not apparent whether the recited amounts are given in reference to the amount of the polyamide or the entire compositions.

Claim 9 contains the trademark/trade name CESA-EXTEND. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a functionalized polymer and, accordingly, the identification/description is indefinite.

It is not clear whether claims 10 and 11 recite the product of claim 1 or an article produced from the product of claim 1. Further, it is not apparent what constitutes "useful" articles in claims 2, 10 and 11 and what are the criteria according to which "usefulness" of the article is determined.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 10 -11 are rejected under 35 U.S.C. 102(b) as being anticipated by any one of US Patents 4,226,949 to Memeger et al (hereinafter "Memeger"), 4,028,287 to Sato et al., (hereinafter "Sato"), or 3,758,424 to Anderson (hereinafter "Anderson").

Each of the above cited references discloses rigid polyamide foams with densities below 5 g/cm<sup>3</sup>. See illustrative example "Foam preparation" in column 5 of Memeger; all illustrative examples in Sato and Anderson. Claims 10 and 11 claim the product of claim 1 with further limitations of intended use of this product. This intended use limitation is given weight only to the extent that the foams disclosed in the references is capable of being used as claimed in claims 10 and 11. The foams disclosed in each of the cited reference are inherently capable for the claimed use because the claimed compositions are believed to be identical to the composition disclosed in the reference. Furthermore, such uses are disclosed in the references.

Therefore, the intended use limitation is anticipated by the reference. The burden is shifted to the applicant to provide convincing factual evidence to the contrary.

The invention as claimed, therefore, is fully anticipated by any of the cited references.

Claims 1-8 and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 2000-103960 to Sekisui Plastics (hereinafter ("Sekisui") (a courtesy copy of machine translation of the document is enclosed).

Sekisui discloses rigid polyamide foams with foam densities of less than 0.5 g/cm<sup>3</sup>. The foams are obtained by mixing a polyamide with a modifying agent and a nucleating agents, and then extruding the mixture with a physical blowing agent. Among modifying agents, maleated styrene polymer, i.e., functionalized polymers, are explicitly disclosed in abstract and in [0029, et seq.] As physical blowing agent, various hydrocarbons, including cyclopentane are explicitly disclosed in, for example, [0043], and nucleating agents, including polytetrafluoroethylene are disclosed in [0050]. The amounts of respective components disclosed in the reference fully correspond to the claimed amounts, see, for example, illustrative examples. Once again, Claims 10 and 11 claim the product of claim 1 with further limitations of intended use of this product. This intended use limitation is given weight only to the extent that the foams disclosed in the reference is capable of being used as claimed in claims 10 and 11. The foams disclosed in the reference are inherently capable for the claimed use because the claimed compositions are believed to be identical to the composition disclosed in the reference. Furthermore, such uses are disclosed in the reference. Therefore, the

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intended use limitation is anticipated by the reference. The burden is shifted to the applicant to provide convincing factual evidence to the contrary.

The invention as claimed, thus is fully anticipated by the Sekisui reference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Irina S. Zemel  
Examiner  
Art Unit 1711



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